UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10

KMGP SERVICES, INC.

Employer

and Case 10-RC-15472

PAPER ALLIED-INDUSTRIAL CHEMICAL
& ENERGY WORKERS, NO. 3-0584[1]

Petitioner

REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION

KMGP Services, Inc., the Employer herein, is a Delaware corporation with an office and place of business located in Alpharetta, Georgia. The Petitioner, Paper Allied-Industrial Chemical & Energy Workers, No. 3-0584, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit consisting of all terminal employees classified as terminal operators, Level 1 through 4, employed by the Employer at seven newly-acquired pipeline truck terminals[2] located in Greensboro, North Carolina; Richmond, Virginia; Washington, D.C. area (in Newington, Virginia); Roanoke, Virginia; Knoxville, Tennessee; Charlotte, North Carolina; and Collins, Mississippi; excluding all full-time operations &

[1] The Petitioner's name appears as stated on the petition and at the hearing.

[2] The addresses of the seven newly-acquired facilities are as follows: 31 Kila Road, Collins, Mississippi; 6801 Freedom Drive, Charlotte, North Carolina; 6907 West Market Street, Greensboro, North Carolina; 5009 Middlebrook Pike, Knoxville, Tennessee; 2000 Trenton Avenue, Richmond, Virginia; 835 Hollins Road, Roanoke, Virginia; and 8200 Terminal Road, Newington, Virginia.

maintenance specialists, field controllers, maintenance technicians, right of way technicians, office administrative, lab, support, engineering, control center controllers, guards and supervisors as defined by the Act. A hearing officer of the Board held a hearing and the Employer submitted a post-hearing brief which was duly considered.

There are a total of approximately 22 employees in the unit sought by the Petitioner at the seven newly-acquired pipeline truck terminals, with a range of one to four employees employed at each terminal. The Employer contends the multi-terminal unit sought is inappropriate because of geographic separateness and distance, and the absence of employee interchange, and common supervision. The Employer argues in its post-hearing brief that "there is no community of interests between or among" the terminal operators "beyond any one, single situs."[3] The Petitioner maintains that the multi-terminal unit sought is an appropriate one, and does not wish to proceed to an election in any alternative unit.

I have considered the evidence and the arguments of both parties, including the post-hearing brief submitted by the Employer. As discussed below, I have concluded that the multi-facility unit sought by the Petitioner at the seven newly-acquired pipeline truck terminals is an appropriate residual unit, and I shall, therefore, direct an election in that unit. To provide a context for my discussion of these issues, I will first provide a general overview of the Employer's operations, followed by a summary of proceedings to date in a prior unit clarification proceeding involving these same employees in Case 10-UC-

[3] The Employer also notes in its post-hearing brief the "presumption that a single location unit is appropriate." The Employer does *not* contend in this proceeding that the public utility system-wide unit presumption should apply to its pipeline operation, as it argued in the related unit clarification proceeding discussed herein.

230[4]. I will then discuss the unit sought, and will set forth the facts and reasoning that support my conclusion that the multi-facility unit sought by the Petitioner is appropriate.

I. GENERAL OVERVIEW OF THE EMPLOYER'S OPERATIONS

The Employer is a Delaware corporation engaged in energy transportation and storage and in the operation of a refined liquid petroleum products pipeline system. It operates the Plantation pipeline, in partnership with Exxon Mobil, at approximately 22 locations located throughout the southeastern United States, starting in Baton Rouge, Louisiana, and extending to the Washington, D.C. area. The Employer receives refined petroleum products (such as gasoline, kerosene and heating oil, and diesel and jet fuel) at refineries in the Gulf Coast area, and provides these products to customers and end users in the southeast, including service stations, energy and liquid fuel companies, various airports, and other consumers.[5]

The Employer employs in total approximately 112 operations and maintenance employees at the 22 system-wide pipeline locations (including pumping stations, delivery terminals and tank farms).[6] For many years, these employees have been represented by Petitioner for collective bargaining purposes. The current collective bargaining agreement between the Employer and Petitioner covering these employees is effective from May 1, 2002 through April 30, 2005.

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[4] At the hearing, the parties stipulated that the record and transcript in 10-UC-230, as well as my decision which issued on July 15, 2004, be considered as part of the record herein. In reaching my conclusions herein, I have reviewed and considered all of this material.

[5] The Plantation pipeline is one of two pipelines which supply liquid fuels to customers in the southeast. The other pipeline, Colonial, shares much of the same right of way; it is owned by a different company and is a direct competitor of the Employer.

[6] These employees are employed in various classifications, including approximately 70 operations and maintenance (O&M) specialists; 16 mechanical technicians; 18 electrical technicians; and six right of way technicians.

The seven pipeline truck terminals involved herein were previously operated by Exxon-Mobil (the Employer's partner in the operation of the Plantation pipeline). In March, 2004, the Employer acquired the seven terminals. This was "an attractive acquisition," according to the testimony of David Hildreth, the Employer's Director of Field Operations, because the terminals were located in close proximity to existing pipeline locations[7], and that "with free interchange of employees," the Employer could effect efficiencies with less employee expense.

The Employer hired 22 of the 30 former Exxon Mobil employees, and it is these employees whom the Petitioner seeks to represent.[8] As of the hearing in this matter, the 22 employees were based at the seven newly-acquired terminals, including four (three terminal operators and one electrical technician) at Richmond; two terminal operators at Newington; four terminal operators at Roanoke; three terminal operators at Greensboro; four terminal operators at Charlotte; four terminal operators at Knoxville; and one terminal operator at Collins.

II. THE UNIT CLARIFICATION PROCEEDING, CASE NO. 10-UC-230

The Employer filed a unit clarification petition in Case No. 10-UC-230 on June 2, 2004, seeking to clarify the existing 112-employee system-wide operations and maintenance unit heretofore described to include the approximately 22 former Exxon-Mobil employees working at the seven newly-acquired pipeline truck terminals. The Employer claimed clarification was appropriate because the employees at the seven

[7] The Roanoke pipeline truck terminal is located about eight miles away from one of the 22 existing pipeline locations; the other six terminals are located within a hundred yards or so (or "across the fence") from other existing pipeline locations.

[8] The record indicates that the Petitioner seeks to include the one electrical technician at Richmond in the unit.

newly-acquired terminals constituted an accretion to the existing unit. The Union disputed the Employer's accretion claim, and urged that the petition be dismissed.

Following a hearing on June 17, 2004, I issued a Decision and Order Dismissing Petition on July 15, 2004, finding that the former Exxon-Mobil employees at the seven newly-acquired pipeline truck terminals did not constitute an accretion to the existing system-wide pipeline unit. In the decision (which has been incorporated herein and made part of the record), I concluded that the factors favoring accretion were strongly outweighed by those factors which militated against it. Accordingly, I concluded that that the former 22 Exxon-Mobil employees did not share an overwhelming community of interests with the 112 operations and maintenance employees as to require their accretion to the existing unit.

Following issuance of the Decision and Order Dismissing Petition, the Petitioner filed the instant petition on July 26, 2004. The Employer filed a timely Request for Review of my Decision on August 4, 2004 which is pending before the Board.[9]

III. THE UNIT SOUGHT

At the outset, it is important to note that the principal question in my consideration of the Employer's unit clarification petition was whether the employees in *one group* (the former Exxon–Mobil employees sought herein) shared an overwhelming community of interest with employees in *another group* (employees in the existing system-wide pipeline unit) as to require their accretion to the existing unit. I concluded they did not. In analyzing the instant petition filed by the Petitioner, the principal question is whether the 22 former Exxon-Mobil employees employed at the seven newly-

[9] On August 11, 2004, I issued an order denying the Employer's request that the proceeding in this matter should be stayed, pending the Board's decision on the Employer's Request for Review in the unit clarification proceeding.

acquired terminals share a sufficient community of interests *among each other* so as to constitute *an* appropriate unit.

It is well settled that there is nothing in the statute which requires that the unit for bargaining sought by the Petitioner be the only appropriate unit, or the ultimate unit, or the most appropriate unit. The Act requires only that the unit be *an* appropriate one. Taylor Bros., Inc., 230 NLRB 861, 869 (1977). In determining whether a petitioned-for multi-facility unit is appropriate, the Board evaluates whether the unit sought comports with any of the Employer's divisions or organizational groupings. Laboratory Corp. of America, 341 NLRB No. 140 (2004). Where, as here, the Petitioner is requesting a residual unit, the Board also considers whether the unit sought will encompass all of the Employer's unrepresented employees in the relevant Employer grouping. Cities Service Oil Co., 200 NLRB 470 (1972). The Board also evaluates, in determining the appropriateness of a multi-facility unit, the employees' skills and duties; terms and conditions of employment; centralized control of management and supervision; employee interchange; geographic proximity; and bargaining history. Bashas', Inc., 337 NLRB 710 (2002); Alamo Rent A-Car, 330 NLRB 897 (2000).

Based on the record and my analysis of the above factors, I am persuaded that the multi-facility unit sought by the Petitioner is an appropriate one. In reaching this conclusion, I note the following. First, the 22 former Exxon-Mobil employees sought at the Employer's seven newly-acquired terminals encompass all of the Employer's unrepresented employees in a discrete Employer organizational grouping. The Employer's Plantation pipeline operation, including the seven newly-acquired terminals, falls administratively within the Employer's Southeast Region Field Operations headed

by a corporate Vice President based at corporate headquarters in Houston. The existing system-wide unit, consisting of approximately 112 employees, comprises all non-exempt field operations employees working on the pipeline, except for the 22 employees based at the seven newly-acquired pipeline truck terminals previously operated by Exxon Mobil. Thus, the Petitioner is seeking to represent these remaining 22 unrepresented employees in a system-wide residual unit.

Another factor weighing in favor of the multi-facility unit sought is common supervision of the 22 employees by corporate management in the Southeast Region Operations group. In analyzing this factor, I am not unmindful, as the Employer emphasizes, that there are seven low-level supervisors at each of the seven newly-acquired terminals. It is clear that they have significant impact on day-to-day concerns of employees[10], such as scheduling, assignment of work, granting vacation and time off requests, and monitoring of employees at the site. However, as I have previously concluded in the unit clarification proceeding, there is substantial decision-making authority over employees vested in management above the local level. The Employer's employment and labor relations policies are set and administered centrally by corporate officials. Further, there are four operations managers who report to Director of Field Operations Hildreth. These four operations managers decide whether open positions

[10] In the unit clarification proceeding, the Employer contended that the local supervisors performed low-level administrative functions, and that there is no local autonomy at the terminals.

should be filled,[11] play a role in discipline, and also make hiring recommendations to Hildreth.[12]

Employees at five of the seven newly-acquired pipeline truck terminals are under the general oversight of one of these operations managers, Murray Clayton, who is based at the Employer's existing pipeline facility in Greensboro. This group includes 17 of the 22 employees at the newly-acquired terminals, including two terminal operators at Newington; four at Richmond (including three terminal operators and one electrical technician); four terminal operators in Roanoke; three terminal operators in Greensboro; and four terminal operators in Charlotte. Two of the operations managers (Eddie Newman, based at the Employer's pipeline facility in Helena, and Marty Sanford, based at the Employer's pipeline facility in Collins) are responsible for operations at the remaining two newly-acquired terminals in Knoxville (where four terminal operators are based), and Collins (where one terminal operator is based). I find that the foregoing central supervision, particularly of 17 of the 22 employees under Clayton's general oversight at five of the seven newly-acquired terminals, militates in favor of a finding that the multi-facility unit is appropriate.

Next, the 22 employees engage in similar functions at the seven terminals, and are generally less trained and skilled than employees in the system-wide unit. They also share other terms and conditions in common, such as a separate wage scale, and seniority (company service bridged back to their start with Exxon-Mobil, and no classification

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[11] The four operations managers assisted in the selection of Exxon-Mobil employees to be hired. They interviewed all employees below the superintendent, foremen and working foremen levels. The local supervisors played no role in the hiring of employees at the time of the acquisition.

[12] In the unit clarification proceeding, the Employer contended that the operations managers "hire, fire, and discipline employees and determine staffing needs." The Employer contended that the four operations managers "have the actual day-to-day decision-making authority" over employees.

seniority in any of the classifications listed in the system-wide collective bargaining agreement). Moreover, regardless of their prior tenure with Exxon-Mobil, they will be considered as probationary employees for the first 12 months of their employment. I find that these terms and conditions they share in common militate in favor of a finding of appropriateness of the multi-facility unit.

The Employer argues that two additional factors, geographic separateness and the absence of interchange, mandate the conclusion that there is no community of interest among the 22 employees "beyond any one, single situs." The record establishes that six of the seven newly-acquired terminals are located about 100 miles from the closest terminal; the closest terminal to the Collins terminal (where only one terminal operator is based) is almost 500 miles away. The 22 employees work only at their respective base locations and there is no evidence of any regular contact among these employees. Further, there has been no employee interchange among these seven terminals, except for the temporary assignment of terminal operators between the Washington, D.C. location (in Newington, Virginia) and Richmond, about 100 miles away, for the first few months after the acquisition, from some time in March until some time in June, 2004.[13]

Notwithstanding the geographic separateness and absence of employee interchange, I do not agree with the Employer's contention in this proceeding that there is no community of interest among these 22 employees "beyond any one, single situs" or terminal. I do not agree that the facts presented herein require the conclusion that single-

[13] At the hearing on the instant petition, Director of Field Operations Hildreth testified that this was a temporary condition and he did not foresee the need to have temporary work assignments at any of the other seven newly-acquired pipeline truck terminal locations. At the hearing on the Employer's unit clarification petition on June 17, 2004, Hildreth was asked, "If pipeline truck terminal employees called in sick next week and couldn't work and you needed some folks, how would you fill those positions." Hildreth testified, "We would have to fill those positions from other pipeline truck terminal locations. We would have to bring them in on a temporary assignment."

terminal units at each of the seven newly-acquired terminals are the only appropriate units. Rather, I am persuaded that the other factors discussed herein support the Petitioner's claim that the multi-facility unit is a coherent, cohesive one and is an appropriate unit under the Act. The employees sought herein are the only remaining unrepresented non-exempt field operation employees working on the Plantation pipeline. They engage in similar functions and are generally less skilled than the other operations and maintenance employees. There is common supervision by corporate management; one operations manager reporting to higher management is responsible for oversight of five of the seven newly-acquired terminals, including 17 of the 22 employees sought herein; two operations managers are responsible for oversight of the remaining two terminals, and 5 employees. These employees also share certain terms and conditions of employment in common and unique to their situation, including a separate wage scale, application of seniority, and current probationary status. In view of the above, I find that the 22 employees at the seven newly-acquired terminals share a sufficient community of interest, and that the multi-facility unit sought is an appropriate unit under the Act.[14]

V. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

[14] While not decisive for my conclusion herein, I also note that a finding that only single-terminal units would be appropriate might permanently deny to the one terminal operator in Collins any opportunity to participate in the collective-bargaining process or to refrain therefrom. See Cities Service, cited supra, 200 NLRB at 471.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer employed at the Employer's seven newly-acquired terminals located in Greensboro, North Carolina; Richmond, Virginia; Washington, D.C. area (in Newington, Virginia); Knoxville, Tennessee; Charlotte, North Carolina; Collins, Mississippi; and Roanoke, Virginia.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

> All terminal employees classified as terminal operators, Level 1 through 4, and electrical technician, employed by the Employer at the following facilities: 31 Kila Road, Collins, Mississippi; 6801 Freedom Drive, Charlotte, North Carolina; 6907 West Market Street, Greensboro, North Carolina; 5009 Middlebrook Pike, Knoxville, Tennessee; 2000 Trenton Avenue, Richmond, Virginia; 835 Hollins Road, Roanoke, Virginia; and 8200 Terminal Road, Newington, Virginia; excluding all full-time operations & maintenance specialists, field controllers, maintenance technicians, right of way technicians, office, administrative, lab, support, engineering, control center controllers, guards and supervisors as defined in the Act.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Paper Allied-

Industrial Chemical & Energy Workers, No. 3-0584. The date, time, and manner of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who are employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military Services of the United States may vote if they appear in person at the polls. Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began; and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with

them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized. Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Suite 1000, Harris Tower, 233 Peachtree Street, N.E., Atlanta, Georgia 30303, on or before September 7, 2004. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (404) 331-2858. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. **Notice Posting Obligations**

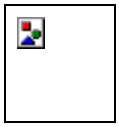
According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to

the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so stops employers from filing objections based on nonposting of the election notice.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, DC 20570-0001. This request must be received by the Board in Washington by 5:00 P.M., (EST) on September 14, 2004. The request may **not** be filed by facsimile.

Dated at Atlanta, Georgia, on this 31st day of August, 2004.



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